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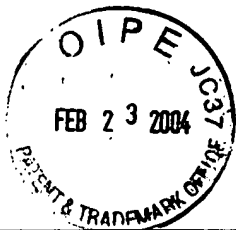
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Docket: 6970.02

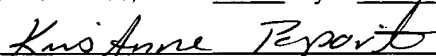
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|-----------------------|--|-------------------------|
| First Named Inventor: | Jeffrey K. Drogue | |
| Appln. No.: | 10/628,588 | |
| Filing Date: | July 28, 2003 | Examiner: Not Yet Known |
| Title: | FLUID AND BIOAEROSOL MANAGEMENT | Group Art Unit: 3761 |

PETITION UNDER RULE 1.47(a)

Mail Stop **MISSING PARTS**
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

I hereby certify that this document is being sent via First Class U. S. mail addressed to: Mail Stop **MISSING PARTS**, Commissioner for Patents, P. O Box 1450, Alexandria, VA 22313-1450, on this 18 day of February, 2004.


KrisAnne Popovits

Sir:

This is a Petition to make an application including a Declaration without the signature of an inventor as provided by 37 C.F.R. § 1.47(a).

The Declaration of the inventors is unsigned by Mr. Jeffrey K. Drogue. The Declaration is signed by the other co-inventors of this application, Mr. Leonard S. Schultz and Mr. Barry M. Thompson.

The pertinent facts establishing inventor J. Drogue's uncooperativeness are as follows:

Applicant has tried to obtain Mr. Drogue's signature, contacting and attempting to contact him repeatedly since the priority application was filed, as evidenced below:

25 June 2002, 5:30 p.m.: Mr. Drogue was contacted by Applicant and informed of the 3 July 2002 deadline to file the Power of Attorney. He was also informed that this was a two-month extension deadline.

26 June 2002, 2:30 p.m.: Mr. Drogue was again contacted by Applicant, and Mr. Drogue informed Applicant he would appear in person to sign the Power of Attorney. However, Mr. Drogue never arrived.

2 July 2002, 11:45 a.m.: Applicant left voice-mail message with Mr. Drogue informing him of the deadline to file the Power of Attorney.

Enclosed as evidence of the above events are notes from an employee of the Applicant (see Exhibit A).

Also enclosed is evidence of attempts by the Agent to contact Mr. Drogue:

2 July 2002: Agent sent e-mail correspondence, with an attached Power of Attorney, to Mr. Drogue, requesting his signature for the Power of Attorney (see Exhibit B).

8 July 2002: Agent received e-mail confirmation that Mr. Drogue received and opened the 2 July 2002 e-mail (see Exhibit C). There was no response from Mr. Drogue.

7 November 2002: Agent again sent e-mail correspondence, with an attached Power of Attorney, to Mr. Drogue, requesting his signature for the Power of Attorney (see Exhibit D).

7 November 2002: Agent received e-mail confirming that Mr. Drogue received and opened the 7 November 2002 e-mail (see Exhibit E). Again, there was no response from Mr. Drogue.

Notwithstanding the above-identified attempts to contact Mr. Drogue, there has been no response or communication from him.

The last known address of Mr. Jeffrey K. Drogue is 5117 Washburn Avenue South, Minneapolis, Minnesota 55410.

A Notice to File Missing Parts of Nonprovisional Application ("Notice") regarding the above-referenced application was mailed on October 27, 2003, with a shortened statutory period of response of two months. This Petition is being submitted on February 18, 2004, with a request for a two month extension of time to respond and a check for the related fee, making this Petition and response to Notice to File Missing Parts due on or before February 27, 2004.

In light of the circumstances indicated above the undersigned respectfully requests that the application be made on behalf of co-inventors who signed the Declaration (L. Schultz and B. Thompson) and the non-signing inventor (J. Drogue).

A check in the amount of \$405 is enclosed herewith to cover the fees associated with this Petition. The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 04-1420.

Respectfully submitted,

DORSEY & WHITNEY LLP
Customer Number 25763

Date: _____

July 18, 2004

By: _____

David E. Bruhn

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(612) 340-6317

LEONARD S. SCHULTZ, M.D.

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ST. LOUIS PARK, MN 55426

PHONE (612) 922-6457

FAX (612) 922-7579

July 2, 2002

Attn: David Bruhn / Kris Ann Popovats
 We talked with Jeffrey Droque several times but he didn't come to the office or have time to meet us to sign his Power of Attorney Document.

June 25, 2002 5:30pm = Talked with Dr. Schultz and was told of the deadline 7-3-2002. Two deadlines have already lapsed. He said he would contact Jean.

^{2:30pm}
 June 26, 2002 Jean called and talked with Jeff. He said he would call before June 27th and arrange a time to come to the office to sign. However, he never called or came to the office.

July 2, 2002
 11:45AM no answer so I left a voice mail for Jeff telling him I needed to get the forms to Morsey & Whitney today as deadline is tomorrow.

Jean Reavis

Bruhn, David

From: Bruhn, David
Sent: Tuesday, July 02, 2002 3:57 PM
To: 'jeffrey drogue'
Subject: RE: lap ses patent

Jeff, thanks for the note. I think Dr. Schultz will be ok, but we will certainly consider submitting some additional claims and/or a continuation application.

On another subject, I left a voice mail on your cell today. As you know from talking to Jean and Dr. Schultz, we need to have you sign a Power of Attorney and an assignment for the "fluid management" invention/application. I have enclosed an e-copy of them, thinking you can simply print and sign them, then fax or mail them back to me. I guess I would prefer fax. Or, if it would be easier, you could drop them off here.

Please call if you have any questions. Thanks, David

-----Original Message-----

From: jeffrey drogue [mailto:jdrogue@mn.rr.com]
Sent: Friday, June 21, 2002 6:02 PM
To: bruhn.david@dorseylaw.com
Cc: lschultz@jljintl.com
Subject: lap ses patent

Dear David,

It's been a while.

I ran into Leonard today and he told me about some new opportunities in the area of smoke evacuation and the laparoscopic patent.

11/7/2002

EXHIBIT B

I'll try to cc this to Leonard - otherwise I'll call his office.

Take care,

• Jeff

11/7/2002

Bruhn, David

From: jeffrey drogue [jdrogue@mn.rr.com]
Sent: Monday, July 08, 2002 4:01 PM
To: Bruhn, David
Subject: Read: lap ses patent



ATT1012572.TXT

This is a receipt for the mail you sent to
"jeffrey drogue" <jdrogue@mn.rr.com> at 7/2/02 3:56 PM

This receipt verifies that the message has been displayed on the recipient's computer at
7/8/02 4:00 PM

Bruhn, David

From: Bruhn, David
Sent: Thursday, November 07, 2002 1:48 PM
To: 'Jeff Drogue'
Subject: Fluid Management



6970.01

POA-Drogue.pdf

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Hi, Jeff. I hope all is well with you.

A few months ago I sent you an e-mail enclosing some forms for you to sign for the above patent application. I didn't hear back from you, so I thought I would try again. They are enclosed.

We don't need your signature to continue with the application, but it would make things a bit easier (would avoid the need for an extra step in the Patent Office). If I don't hear from you or get the forms back from you within a few weeks, I will just go ahead without them.

Thanks, David



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Fax: (612) 340-8856
bruhn.david@dorseylaw.com

Bruhn, David

From: jeffrey drogue [jdrogue@mn.rr.com]
Sent: Thursday, November 07, 2002 2:30 PM
To: Bruhn, David
Subject: Read: Fluid Management



ATT327616.TXT

This is a receipt for the mail you sent to
"Jeff Droque" <jdrogue@mn.rr.com> at 11/7/02 1:48 PM

This receipt verifies that the message has been displayed on the recipient's computer at
11/7/02 2:30 PM